

106TH CONGRESS
2D SESSION

S. 2700

IN THE SENATE OF THE UNITED STATES

Mr. L. CHAFEE (for himself, Mr. LAUTENBERG, Mr. SMITH of New Hampshire, and Mr. BAUCUS) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to promote the cleanup and reuse of brownfields, to provide financial assistance for brownfields revitalization, to enhance State response programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Brownfields Revitalization and Environmental Restora-
6 tion Act of 2000”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—BROWNFIELDS REVITALIZATION FUNDING

Sec. 101. Brownfields revitalization funding.

TITLE II—BROWNFIELDS LIABILITY CLARIFICATIONS

Sec. 201. Contiguous properties.

Sec. 202. Prospective purchasers and windfall liens.

Sec. 203. Innocent landowners.

TITLE III—STATE RESPONSE PROGRAMS

Sec. 301. State response programs.

Sec. 302. Additions to National Priorities List.

1 **TITLE I—BROWNFIELDS**
2 **REVITALIZATION FUNDING**

3 **SEC. 101. BROWNFIELDS REVITALIZATION FUNDING.**

4 (a) DEFINITION OF BROWNFIELD SITE.—Section
5 101 of the Comprehensive Environmental Response, Com-
6 pensation, and Liability Act of 1980 (42 U.S.C. 9601) is
7 amended by adding at the end the following:

8 “(39) BROWNFIELD SITE.—

9 “(A) IN GENERAL.—The term ‘brownfield
10 site’ means real property, the expansion, rede-
11 velopment, or reuse of which may be com-
12 plicated by the presence or potential presence of
13 a hazardous substance, pollutant, or contami-
14 nant.

15 “(B) EXCLUSIONS.—The term ‘brownfield
16 site’ does not include—

1 “(i) a facility that is the subject of a
2 planned or ongoing removal action under
3 this title;

4 “(ii) a facility that is listed on the Na-
5 tional Priorities List or is proposed for
6 listing;

7 “(iii) a facility that is the subject of
8 a unilateral administrative order, a court
9 order, an administrative order on consent
10 or judicial consent decree that has been
11 issued to or entered into by the parties
12 under this Act;

13 “(iv) a facility that is the subject of a
14 unilateral administrative order, a court
15 order, an administrative order on consent
16 or judicial consent decree that has been
17 issued to or entered into by the parties, or
18 a facility to which a permit has been issued
19 by the United States or an authorized
20 State under the Solid Waste Disposal Act
21 (42 U.S.C. 6901 et seq.), the Federal
22 Water Pollution Control Act (33 U.S.C.
23 1321), the Toxic Substances Control Act
24 (15 U.S.C. 2601 et seq.), or the Safe

1 Drinking Water Act (42 U.S.C. 300f et
2 seq.);

3 “(v) a facility that—

4 “(I) is subject to corrective ac-
5 tion under section 3004(u) or 3008(h)
6 of the Solid Waste Disposal Act (42
7 U.S.C. 6924(u), 6928(h)); and

8 “(II) to which a corrective action
9 permit or order has been issued or
10 modified to require the implementa-
11 tion of corrective measures;

12 “(vi) a land disposal unit with respect
13 to which—

14 “(I) a closure notification under
15 subtitle C of the Solid Waste Disposal
16 Act (42 U.S.C. 6921 et seq.) has been
17 submitted; and

18 “(II) closure requirements have
19 been specified in a closure plan or
20 permit;

21 “(vii) a facility that is subject to the
22 jurisdiction, custody, or control of a de-
23 partment, agency, or instrumentality of the
24 United States, except for land held in trust
25 by the United States for an Indian tribe;

1 “(viii) a portion of a facility—

2 “(I) at which there has been a
3 release of polychlorinated biphenyls;
4 and

5 “(II) that is subject to remedi-
6 ation under the Toxic Substances
7 Control Act (15 U.S.C. 2601 et seq.);
8 or

9 “(ix) a portion of a facility, for which
10 portion, assistance for response activity
11 has been obtained under subtitle I of the
12 Solid Waste Disposal Act (42 U.S.C. 6991
13 et seq.) from the Leaking Underground
14 Storage Tank Trust Fund established
15 under section 9508 of the Internal Rev-
16 enue Code of 1986.

17 “(C) SITE-BY-SITE DETERMINATIONS.—

18 Notwithstanding subparagraph (B) and on a
19 site-by-site basis, the President may authorize
20 financial assistance under section 128 to an eli-
21 gible entity at a site included in clause (i), (iv),
22 (v), (vi), (viii), or (ix) of subparagraph (B) if
23 the President finds that financial assistance will
24 protect human health and the environment, and
25 either promote economic development or enable

1 the creation of, preservation of, or addition to
2 parks, greenways, undeveloped property, other
3 recreational property, or other property used
4 for nonprofit purposes.

5 “(D) ADDITIONAL AREAS.—For the pur-
6 poses of section 128, the term ‘brownfield site’
7 includes—

8 “(i) a site that is contaminated by a
9 controlled substance (as defined in section
10 102 of the Controlled Substances Act (21
11 U.S.C. 802)); and

12 “(ii) mine-scarred land.”.

13 (b) BROWNFIELDS REVITALIZATION FUNDING.—
14 Title I of the Comprehensive Environmental Response,
15 Compensation, and Liability Act of 1980 (42 U.S.C. 9601
16 et seq.) is amended by adding at the end the following:
17 **“SEC. 128. BROWNFIELDS REVITALIZATION FUNDING.**

18 “(a) DEFINITION OF ELIGIBLE ENTITY.—In this sec-
19 tion, the term ‘eligible entity’ means—

20 “(1) a general purpose unit of local govern-
21 ment;

22 “(2) a land clearance authority or other quasi-
23 governmental entity that operates under the super-
24 vision and control of or as an agent of a general
25 purpose unit of local government;

1 “(3) a government entity created by a State
2 legislature;

3 “(4) a regional council or group of general pur-
4 pose units of local government;

5 “(5) a redevelopment agency that is chartered
6 or otherwise sanctioned by a State;

7 “(6) a State; or

8 “(7) an Indian Tribe.

9 “(b) BROWNFIELD SITE CHARACTERIZATION AND
10 ASSESSMENT GRANT PROGRAM.—

11 “(1) ESTABLISHMENT OF PROGRAM.—The Ad-
12 ministrator shall establish a program to—

13 “(A) provide grants to inventory, charac-
14 terize, assess, and conduct planning related to
15 brownfield sites under paragraph (2); and

16 “(B) perform targeted site assessments at
17 brownfield sites.

18 “(2) ASSISTANCE FOR SITE CHARACTERIZATION
19 AND ASSESSMENT.—

20 “(A) IN GENERAL.—On approval of an ap-
21 plication made by an eligible entity, the Admin-
22 istrator may make a grant to the eligible entity
23 to be used for programs to inventory, charac-
24 terize, assess, and conduct planning related to
25 1 or more brownfield sites.

1 “(B) SITE CHARACTERIZATION AND AS-
2 SESSMENT.—A site characterization and assess-
3 ment carried out with the use of a grant under
4 subparagraph (A) shall be performed in accord-
5 ance with section 101(35)(B).

6 “(c) GRANTS AND LOANS FOR BROWNFIELD REME-
7 DIATION.—

8 “(1) GRANTS PROVIDED BY THE PRESIDENT.—
9 Subject to subsections (d) and (e), the President
10 shall establish a program to provide grants to—

11 “(A) eligible entities, to be used for cap-
12 italization of revolving loan funds; and

13 “(B) eligible entities or nonprofit organiza-
14 tions, where warranted, as determined by the
15 President based on considerations under para-
16 graph (3), to be used directly for remediation of
17 1 or more brownfield sites that is owned by the
18 entity or organization that receives the grant
19 and in amounts not to exceed \$200,000 for
20 each site to be remediated.

21 “(2) LOANS AND GRANTS PROVIDED BY ELIGI-
22 BLE ENTITIES.—An eligible entity that receives a
23 grant under paragraph (1)(A) shall use the grant
24 funds to provide assistance for the remediation of
25 brownfield sites in the form of—

1 “(A) 1 or more loans to an eligible entity,
2 a site owner, a site developer, or another per-
3 son; or

4 “(B) 1 or more grants to an eligible entity
5 or other nonprofit organization, where war-
6 ranted, as determined by the eligible entity that
7 is providing the assistance, based on consider-
8 ations under paragraph (3), to remediate sites
9 owned by the eligible entity or nonprofit organi-
10 zation that receives the grant.

11 “(3) CONSIDERATIONS.—In determining wheth-
12 er a grant under paragraph (1)(B) or (2)(B) is war-
13 ranted, the President or the eligible entity, as the
14 case may be, shall take into consideration—

15 “(A) the extent to which a grant will facili-
16 tate the creation of, preservation of, or addition
17 to a park, a greenway, undeveloped property,
18 recreational property, or other property used
19 for nonprofit purposes;

20 “(B) the extent to which a grant will meet
21 the needs of a community that has an inability
22 to draw on other sources of funding for environ-
23 mental remediation and subsequent redevelop-
24 ment of the area in which a brownfield site is

1 located because of the small population or low
2 income of the community;

3 “(C) the extent to which a grant will facili-
4 tate the use or reuse of existing infrastructure;

5 “(D) the benefit of promoting the long-
6 term availability of funds from a revolving loan
7 fund for brownfield remediation; and

8 “(E) such other factors as the Adminis-
9 trator considers appropriate to consider for the
10 purposes of this section.

11 “(4) COMPLIANCE WITH APPLICABLE LAWS.—
12 An eligible entity that provides assistance under
13 paragraph (2) shall include in all loan and grant
14 agreements a requirement that the loan or grant re-
15 cipient shall comply with all laws applicable to the
16 cleanup for which grant funds will be used and en-
17 sure that the cleanup protects human health and the
18 environment.

19 “(5) TRANSITION.—Revolving loan funds that
20 have been established before the date of enactment
21 of this section may be used in accordance with this
22 subsection.

23 “(d) GENERAL PROVISIONS.—

24 “(1) MAXIMUM GRANT AMOUNT.—

1 “(A) BROWNFIELD SITE CHARACTERIZA-
2 TION AND ASSESSMENT.—

3 “(i) IN GENERAL.—A grant under
4 subsection (b)—

5 “(I) may be awarded to an eligi-
6 ble entity on a community-wide or
7 site-by-site basis; and

8 “(II) shall not exceed, for any in-
9 dividual brownfield site covered by the
10 grant, \$200,000.

11 “(ii) WAIVER.—The Administrator
12 may waive the \$200,000 limitation under
13 clause (i)(II) to permit the brownfield site
14 to receive a grant of not to exceed
15 \$350,000, based on the anticipated level of
16 contamination, size, or status of ownership
17 of the site.

18 “(B) BROWNFIELD REMEDIATION.—

19 “(i) GRANT AMOUNT.—A grant under
20 subsection (c)(1)(A) may be awarded to an
21 eligible entity on a community-wide or site-
22 by-site basis, not to exceed \$1,000,000 per
23 eligible entity.

24 “(ii) ADDITIONAL GRANT AMOUNT.—
25 The Administrator may make an additional

1 grant to an eligible entity described in
2 clause (i) for any year after the year for
3 which the initial grant is made, taking into
4 consideration—

5 “(I) the number of sites and
6 number of communities that are ad-
7 dressed by the revolving loan fund;

8 “(II) the demand for funding by
9 eligible entities that have not pre-
10 viously received a grant under this
11 section;

12 “(III) the demonstrated ability of
13 the eligible entity to use the revolving
14 loan fund to enhance remediation and
15 provide funds on a continuing basis;
16 and

17 “(IV) any other factors that the
18 Administrator considers appropriate
19 to carry out this section.

20 “(2) PROHIBITION.—

21 “(A) IN GENERAL.—No part of a grant or
22 loan under this section may be used for the
23 payment of—

24 “(i) a penalty or fine;

1 “(ii) a Federal cost-share require-
2 ment;

3 “(iii) an administrative cost;

4 “(iv) a response cost at a brownfield
5 site for which the recipient of the grant or
6 loan is potentially liable under section 107;
7 or

8 “(v) a cost of compliance with any
9 Federal law (including a Federal law speci-
10 fied in section 101(39)(B)).

11 “(B) EXCLUSIONS.—For the purposes of
12 subparagraph (A)(iii), the term ‘administrative
13 cost’ does not include the cost of—

14 “(i) investigation and identification of
15 the extent of contamination;

16 “(ii) design and performance of a re-
17 sponse action; or

18 “(iii) monitoring of a natural re-
19 source.

20 “(3) ASSISTANCE FOR DEVELOPMENT OF
21 LOCAL GOVERNMENT SITE REMEDIATION PRO-
22 GRAMS.—A local government that receives a grant
23 under this section may use not to exceed 10 percent
24 of the grant funds to develop and implement a
25 brownfields program that may include—

1 “(A) monitoring the health of populations
2 exposed to 1 or more hazardous substances
3 from a brownfield site; and

4 “(B) monitoring and enforcement of any
5 institutional control used to prevent human ex-
6 posure to any hazardous substance from a
7 brownfield site.

8 “(e) GRANT APPLICATIONS.—

9 “(1) SUBMISSION.—

10 “(A) IN GENERAL.—

11 “(i) APPLICATION.—An eligible entity
12 may submit to the Administrator, through
13 a regional office of the Environmental Pro-
14 tection Agency and in such form as the
15 Administrator may require, an application
16 for a grant under this section for 1 or
17 more brownfield sites (including informa-
18 tion on the criteria used by the Adminis-
19 trator to rank applications under para-
20 graph (3), to the extent that the informa-
21 tion is available).

22 “(ii) NCP REQUIREMENTS.—The Ad-
23 ministrator may include in any require-
24 ment for submission of an application
25 under clause (i) a requirement of the Na-

1 tional Contingency Plan only to the extent
2 that the requirement is relevant and appro-
3 priate to the program under this section.

4 “(B) COORDINATION.—The Administrator
5 shall coordinate with other Federal agencies to
6 assist in making eligible entities aware of other
7 available Federal resources.

8 “(C) GUIDANCE.—The Administrator shall
9 publish guidance to assist eligible entities in ap-
10 plying for grants under this section.

11 “(2) APPROVAL.—The Administrator shall—

12 “(A) complete an annual review of applica-
13 tions for grants that are received from eligible
14 entities under this section; and

15 “(B) award grants under this section to el-
16 igible entities that the Administrator deter-
17 mines have the highest rankings under the
18 ranking criteria established under paragraph
19 (3).

20 “(3) RANKING CRITERIA.—The Administrator
21 shall establish a system for ranking grant applica-
22 tions received under this subsection that includes the
23 following criteria:

24 “(A) The extent to which a grant will stim-
25 ulate the availability of other funds for environ-

1 mental assessment or remediation, and subse-
2 quent reuse, of an area in which 1 or more
3 brownfield sites are located.

4 “(B) The potential of the proposed project
5 or the development plan for an area in which 1
6 or more brownfield sites are located to stimu-
7 late economic development of the area on com-
8 pletion of the cleanup.

9 “(C) The extent to which a grant would
10 address or facilitate the identification and re-
11 duction of threats to human health and the en-
12 vironment.

13 “(D) The extent to which a grant would
14 facilitate the use or reuse of existing infrastruc-
15 ture.

16 “(E) The extent to which a grant would
17 facilitate the creation of, preservation of, or ad-
18 dition to a park, a greenway, undeveloped prop-
19 erty, recreational property, or other property
20 used for nonprofit purposes.

21 “(F) The extent to which a grant would
22 meet the needs of a community that has an in-
23 ability to draw on other sources of funding for
24 environmental remediation and subsequent re-
25 development of the area in which a brownfield

1 site is located because of the small population
2 or low income of the community.

3 “(G) The extent to which the applicant is
4 eligible for funding from other sources.

5 “(H) The extent to which a grant will fur-
6 ther the fair distribution of funding between
7 urban and nonurban areas.

8 “(I) The extent to which the grant pro-
9 vides for involvement of the local community in
10 the process of making decisions relating to
11 cleanup and future use of a brownfield site.

12 “(f) IMPLEMENTATION OF BROWNFIELDS PRO-
13 GRAMS.—

14 “(1) ESTABLISHMENT OF PROGRAM.—The Ad-
15 ministrator may provide, or fund eligible entities to
16 provide, training, research, and technical assistance
17 to individuals and organizations, as appropriate, to
18 facilitate the inventory of brownfield sites, site as-
19 sessments, remediation of brownfield sites, commu-
20 nity involvement, or site preparation.

21 “(2) FUNDING RESTRICTIONS.—The total Fed-
22 eral funds to be expended by the Administrator
23 under this subsection shall not exceed 15 percent of
24 the total amount appropriated to carry out this sec-
25 tion in any fiscal year.

1 “(g) AUDITS.—

2 “(1) IN GENERAL.—The Inspector General of
3 the Environmental Protection Agency shall conduct
4 such reviews or audits of grants and loans under
5 this section as the Inspector General considers nec-
6 essary to carry out this section.

7 “(2) PROCEDURE.—An audit under this para-
8 graph shall be conducted in accordance with the au-
9 diting procedures of the General Accounting Office,
10 including chapter 75 of title 31, United States Code.

11 “(3) VIOLATIONS.—If the Administrator deter-
12 mines that a person that receives a grant or loan
13 under this section has violated or is in violation of
14 a condition of the grant, loan, or applicable Federal
15 law, the Administrator may—

16 “(A) terminate the grant or loan;

17 “(B) require the person to repay any funds
18 received; and

19 “(C) seek any other legal remedies avail-
20 able to the Administrator.

21 “(h) LEVERAGING.—An eligible entity that receives
22 a grant under this section may use the grant funds for
23 a portion of a project at a brownfield site for which fund-
24 ing is received from other sources if the grant funds are

1 used only for the purposes described in subsection (b) or
2 (c).

3 “(i) AGREEMENTS.—Each grant or loan made under
4 this section shall be subject to an agreement that—

5 “(1) requires the recipient to comply with all
6 applicable Federal and State laws;

7 “(2) requires that the recipient use the grant or
8 loan exclusively for purposes specified in subsection
9 (b) or (c), as applicable;

10 “(3) in the case of an application by an eligible
11 entity under subsection (c)(1), requires the eligible
12 entity to pay a matching share (which may be in the
13 form of a contribution of labor, material, or services)
14 of at least 20 percent, from non-Federal sources of
15 funding, unless the Administrator determines that
16 the matching share would place an undue hardship
17 on the eligible entity; and

18 “(4) contains such other terms and conditions
19 as the Administrator determines to be necessary to
20 carry out this section.

21 “(j) FACILITY OTHER THAN BROWNFIELD SITE.—
22 The fact that a facility may not be a brownfield site within
23 the meaning of section 101(39)(A) has no effect on the
24 eligibility of the facility for assistance under any other pro-
25 vision of Federal law.

1 “(k) FUNDING.—There is authorized to be appro-
2 priated to carry out this section \$150,000,000 for each
3 of fiscal years 2001 through 2005.”.

4 **TITLE II—BROWNFIELDS**
5 **LIABILITY CLARIFICATIONS**

6 **SEC. 201. CONTIGUOUS PROPERTIES.**

7 Section 107 of the Comprehensive Environmental Re-
8 sponse, Compensation, and Liability Act of 1980 (42
9 U.S.C. 9607) is amended by adding at the end the fol-
10 lowing:

11 “(o) CONTIGUOUS PROPERTIES.—

12 “(1) NOT CONSIDERED TO BE AN OWNER OR
13 OPERATOR.—

14 “(A) IN GENERAL.—A person that owns
15 real property that is contiguous to or otherwise
16 similarly situated with respect to, and that is or
17 may be contaminated by a release or threatened
18 release of a hazardous substance from, real
19 property that is not owned by that person shall
20 not be considered to be an owner or operator of
21 a vessel or facility under paragraph (1) or (2)
22 of subsection (a) solely by reason of the con-
23 tamination if—

1 “(i) the person did not cause, con-
2 tribute, or consent to the release or threat-
3 ened release;

4 “(ii) the person is not—

5 “(I) potentially liable, or affili-
6 ated with any other person that is po-
7 tentially liable, for response costs at a
8 facility through any direct or indirect
9 familial relationship or any contrac-
10 tual, corporate, or financial relation-
11 ship (other than a contractual, cor-
12 porate, or financial relationship that
13 is created by a contract for the sale of
14 goods or services); or

15 “(II) the result of a reorganiza-
16 tion of a business entity that was po-
17 tentially liable;

18 “(iii) the person takes reasonable
19 steps to—

20 “(I) stop any continuing release;

21 “(II) prevent any threatened fu-
22 ture release; and

23 “(III) prevent or limit human,
24 environmental, or natural resource ex-
25 posure to any hazardous substance re-

1 leased on or from property owned by
2 that person;

3 “(iv) the person provides full coopera-
4 tion, assistance, and access to persons that
5 are authorized to conduct response actions
6 or natural resource restoration at the ves-
7 sel or facility from which there has been a
8 release or threatened release (including the
9 cooperation and access necessary for the
10 installation, integrity, operation, and main-
11 tenance of any complete or partial re-
12 sponse action at the vessel or facility);

13 “(v) the person—

14 “(I) is in compliance with any
15 land use restrictions established or re-
16 lied on in connection with the re-
17 sponse action at a facility; and

18 “(II) does not impede the effec-
19 tiveness or integrity of any institu-
20 tional control employed in connection
21 with a response action;

22 “(vi) the person is in compliance with
23 any request for information or administra-
24 tive subpoena issued by the President
25 under this Act;

1 “(vii) the person provides all legally
2 required notices with respect to the dis-
3 covery or release of any hazardous sub-
4 stances at the facility; and

5 “(viii) at the time at which the person
6 acquired the property, the person—

7 “(I) conducted all appropriate in-
8 quiry within the meaning of section
9 101(35)(B) with respect to the prop-
10 erty; and

11 “(II) did not know or have rea-
12 son to know that the property was or
13 could be contaminated by a release or
14 threatened release of 1 or more haz-
15 ardous substances from other real
16 property not owned or operated by the
17 person.

18 “(B) DEMONSTRATION.—To qualify as a
19 person described in subparagraph (A), a person
20 must establish by a preponderance of the evi-
21 dence that the conditions in clauses (i) through
22 (viii) of subparagraph (A) have been met.

23 “(C) BONA FIDE PROSPECTIVE PUR-
24 CHASER.—Any person that does not qualify as
25 a person described in this paragraph because

1 the person had knowledge specified in subpara-
2 graph (A)(viii) at the time of acquisition of the
3 real property may qualify as a bona fide pro-
4 spective purchaser under section 101(40) if the
5 person is otherwise described in that section.

6 “(D) GROUND WATER.—If a hazardous
7 substance from 1 or more sources that are not
8 on the property of a person enters ground water
9 beneath the property of the person solely as a
10 result of subsurface migration in an aquifer,
11 subparagraph (A)(iii) shall not require the per-
12 son to conduct ground water investigations or
13 to install ground water remediation systems, ex-
14 cept in accordance with the policy of the Envi-
15 ronmental Protection Agency concerning owners
16 of property containing contaminated aquifers,
17 dated May 24, 1995.

18 “(2) EFFECT OF LAW.—With respect to a per-
19 son described in this subsection, nothing in this
20 subsection—

21 “(A) limits any defense to liability that
22 may be available to the person under any other
23 provision of law; or

24 “(B) imposes liability on the person that is
25 not otherwise imposed by subsection (a).

1 “(3) ASSURANCES.—The Administrator may—

2 “(A) issue an assurance that no enforce-
3 ment action under this Act will be initiated
4 against a person described in paragraph (1);
5 and

6 “(B) grant a person described in para-
7 graph (1) protection against a cost recovery or
8 contribution action under section 113(f).”.

9 **SEC. 202. PROSPECTIVE PURCHASERS AND WINDFALL**
10 **LIENS.**

11 (a) DEFINITION OF BONA FIDE PROSPECTIVE PUR-
12 CHASER.—Section 101 of the Comprehensive Environ-
13 mental Response, Compensation, and Liability Act of
14 1980 (42 U.S.C. 9601) (as amended by section 101(a))
15 is amended by adding at the end the following:

16 “(40) BONA FIDE PROSPECTIVE PURCHASER.—

17 The term ‘bona fide prospective purchaser’ means a
18 person (or a tenant of a person) that acquires own-
19 ership of a facility after the date of enactment of
20 this paragraph and that establishes each of the fol-
21 lowing by a preponderance of the evidence:

22 “(A) DISPOSAL PRIOR TO ACQUISITION.—

23 All disposal of hazardous substances at the fa-
24 cility occurred before the person acquired the
25 facility.

1 “(B) INQUIRIES.—

2 “(i) IN GENERAL.—The person made
3 all appropriate inquiries into the previous
4 ownership and uses of the facility in ac-
5 cordance with generally accepted good
6 commercial and customary standards and
7 practices in accordance with clauses (ii)
8 and (iii).

9 “(ii) STANDARDS AND PRACTICES.—
10 The standards and practices referred to in
11 clauses (ii) and (iv) of paragraph (35)(B)
12 shall be considered to satisfy the require-
13 ments of this subparagraph.

14 “(iii) RESIDENTIAL USE.—In the case
15 of property in residential or other similar
16 use at the time of purchase by a non-
17 governmental or noncommercial entity, a
18 facility inspection and title search that re-
19 veal no basis for further investigation shall
20 be considered to satisfy the requirements
21 of this subparagraph.

22 “(C) NOTICES.—The person provides all
23 legally required notices with respect to the dis-
24 covery or release of any hazardous substances
25 at the facility.

1 “(D) CARE.—The person exercises appro-
2 priate care with respect to hazardous sub-
3 stances found at the facility by taking reason-
4 able steps to—

5 “(i) stop any continuing release;

6 “(ii) prevent any threatened future re-
7 lease; and

8 “(iii) prevent or limit human, environ-
9 mental, or natural resource exposure to
10 any previously released hazardous sub-
11 stance.

12 “(E) COOPERATION, ASSISTANCE, AND AC-
13 CESS.—The person provides full cooperation,
14 assistance, and access to persons that are au-
15 thorized to conduct response actions at a vessel
16 or facility (including the cooperation and access
17 necessary for the installation, integrity, oper-
18 ation, and maintenance of any complete or par-
19 tial response actions at the vessel or facility).

20 “(F) INSTITUTIONAL CONTROL.—The
21 person—

22 “(i) is in compliance with any land
23 use restrictions established or relied on in
24 connection with the response action at a
25 vessel or facility; and

1 “(ii) does not impede the effectiveness
2 or integrity of any institutional control em-
3 ployed at the vessel or facility in connec-
4 tion with a response action.

5 “(G) REQUESTS; SUBPOENAS.—The person
6 complies with any request for information or
7 administrative subpoena issued by the President
8 under this Act.

9 “(H) NO AFFILIATION.—The person is
10 not—

11 “(i) potentially liable, or affiliated
12 with any other person that is potentially
13 liable, for response costs at a facility
14 through—

15 “(I) any direct or indirect famil-
16 ial relationship; or

17 “(II) any contractual, corporate,
18 or financial relationship (other than a
19 contractual, corporate, or financial re-
20 lationship that is created by the in-
21 struments by which title to the facility
22 is conveyed or financed or by a con-
23 tract for the sale of goods or services);
24 or

1 “(ii) the result of a reorganization of
2 a business entity that was potentially lia-
3 ble.”.

4 (b) PROSPECTIVE PURCHASER AND WINDFALL
5 LIEN.—Section 107 of the Comprehensive Environmental
6 Response, Compensation, and Liability Act of 1980 (42
7 U.S.C. 9607) (as amended by section 201) is amended by
8 adding at the end the following:

9 “(p) PROSPECTIVE PURCHASER AND WINDFALL
10 LIEN.—

11 “(1) LIMITATION ON LIABILITY.—Notwith-
12 standing subsection (a)(1), a bona fide prospective
13 purchaser whose potential liability for a release or
14 threatened release is based solely on the purchaser’s
15 being considered to be an owner or operator of a fa-
16 cility shall not be liable as long as the bona fide pro-
17 spective purchaser does not impede the performance
18 of a response action or natural resource restoration.

19 “(2) LIEN.—If there are unrecovered response
20 costs incurred by the United States at a facility for
21 which an owner of the facility is not liable by reason
22 of paragraph (1), and if each of the conditions de-
23 scribed in paragraph (3) is met, the United States
24 shall have a lien on the facility, or may by agree-
25 ment with the party obtain from an appropriate

1 party a lien on any other property or other assur-
2 ance of payment satisfactory to the Administrator,
3 for the unrecovered response costs.

4 “(3) CONDITIONS.—The conditions referred to
5 in paragraph (2) are the following:

6 “(A) RESPONSE ACTION.—A response ac-
7 tion for which there are unrecovered costs of
8 the United States is carried out at the facility.

9 “(B) FAIR MARKET VALUE.—The response
10 action increases the fair market value of the fa-
11 cility above the fair market value of the facility
12 that existed before the response action was ini-
13 tiated.

14 “(4) AMOUNT; DURATION.—A lien under para-
15 graph (2)—

16 “(A) shall be in an amount not to exceed
17 the increase in fair market value of the prop-
18 erty attributable to the response action at the
19 time of a sale or other disposition of the prop-
20 erty;

21 “(B) shall arise at the time at which costs
22 are first incurred by the United States with re-
23 spect to a response action at the facility;

24 “(C) shall be subject to the requirements
25 of subsection (l)(3); and

1 “(D) shall continue until the earlier of—

2 “(i) satisfaction of the lien by sale or
3 other means; or

4 “(ii) notwithstanding any statute of
5 limitations under section 113, recovery of
6 all response costs incurred at the facility.”.

7 **SEC. 203. INNOCENT LANDOWNERS.**

8 Section 101(35) of the Comprehensive Environmental
9 Response, Compensation, and Liability Act of 1980 (42
10 U.S.C. 9601(35)) is amended—

11 (1) in subparagraph (A)—

12 (A) in the first sentence, in the matter pre-
13 ceding clause (i), by striking “deeds or” and in-
14 serting “deeds, easements, leases, or”; and

15 (B) in the second sentence—

16 (i) by striking “he” and inserting “the
17 defendant”; and

18 (ii) by striking the period at the end
19 and inserting “, provides full cooperation,
20 assistance, and facility access to the per-
21 sons that are authorized to conduct re-
22 sponse actions at the facility (including the
23 cooperation and access necessary for the
24 installation, integrity, operation, and main-
25 tenance of any complete or partial re-

1 sponse action at the facility), and is in
2 compliance with any land use restrictions
3 established or relied on in connection with
4 the response action at a facility, and does
5 not impede the effectiveness or integrity of
6 any institutional control employed at the
7 facility in connection with a response ac-
8 tion.”; and

9 (2) by striking subparagraph (B) and inserting
10 the following:

11 “(B) REASON TO KNOW.—

12 “(i) ALL APPROPRIATE INQUIRIES.—

13 To establish that the defendant had no
14 reason to know of the matter described in
15 subparagraph (A)(i), the defendant must
16 demonstrate to a court that—

17 “(I) on or before the date on
18 which the defendant acquired the fa-
19 cility, the defendant carried out all
20 appropriate inquiries, as provided in
21 clauses (ii) and (iv), into the previous
22 ownership and uses of the facility in
23 accordance with generally accepted
24 good commercial and customary
25 standards and practices; and

1 “(II) the defendant took reason-
2 able steps to—

3 “(aa) stop any continuing
4 release;

5 “(bb) prevent any threat-
6 ened future release; and

7 “(cc) prevent or limit any
8 human, environmental, or natural
9 resource exposure to any pre-
10 viously released hazardous sub-
11 stance.

12 “(ii) STANDARDS AND PRACTICES.—
13 Not later than 2 years after the date of en-
14 actment of the Brownfields Revitalization
15 and Environmental Restoration Act of
16 2000, the Administrator shall by regula-
17 tion establish standards and practices for
18 the purpose of satisfying the requirement
19 to carry out all appropriate inquiries under
20 clause (i).

21 “(iii) CRITERIA.—In promulgating
22 regulations that establish the standards
23 and practices referred to in clause (ii), the
24 Administrator shall include each of the fol-
25 lowing:

1 “(I) The results of an inquiry by
2 an environmental professional.

3 “(II) Interviews with past and
4 present owners, operators, and occu-
5 pants of the facility for the purpose of
6 gathering information regarding the
7 potential for contamination at the fa-
8 cility.

9 “(III) Reviews of historical
10 sources, such as chain of title docu-
11 ments, aerial photographs, building
12 department records, and land use
13 records, to determine previous uses
14 and occupancies of the real property
15 since the property was first developed.

16 “(IV) Searches for recorded envi-
17 ronmental cleanup liens against the
18 facility that are filed under Federal,
19 State, or local law.

20 “(V) Reviews of Federal, State,
21 and local government records, waste
22 disposal records, underground storage
23 tank records, and hazardous waste
24 handling, generation, treatment, dis-

1 posal, and spill records, concerning
2 contamination at or near the facility.

3 “(VI) Visual inspections of the
4 facility and of adjoining properties.

5 “(VII) Specialized knowledge or
6 experience on the part of the defend-
7 ant.

8 “(VIII) The relationship of the
9 purchase price to the value of the
10 property, if the property was not con-
11 taminated.

12 “(IX) Commonly known or rea-
13 sonably ascertainable information
14 about the property.

15 “(X) The degree of obviousness
16 of the presence or likely presence of
17 contamination at the property, and
18 the ability to detect the contamination
19 by appropriate investigation.

20 “(iv) INTERIM STANDARDS AND PRAC-
21 TICES.—

22 “(I) PROPERTY PURCHASED BE-
23 FORE MAY 31, 1997.—With respect to
24 property purchased before May 31,
25 1997, in making a determination with

1 respect to a defendant described of
2 clause (i), a court shall take into
3 account—

4 “(aa) any specialized knowl-
5 edge or experience on the part of
6 the defendant;

7 “(bb) the relationship of the
8 purchase price to the value of the
9 property, if the property was not
10 contaminated;

11 “(cc) commonly known or
12 reasonably ascertainable informa-
13 tion about the property;

14 “(dd) the obviousness of the
15 presence or likely presence of
16 contamination at the property;
17 and

18 “(ee) the ability of the de-
19 fendant to detect the contamina-
20 tion by appropriate inspection.

21 “(II) PROPERTY PURCHASED ON
22 OR AFTER MAY 31, 1997.—With re-
23 spect to property purchased on or
24 after May 31, 1997, and until the Ad-
25 ministrator promulgates the regula-

1 tions described in clause (ii), the pro-
2 cedures of the American Society for
3 Testing and Materials, including the
4 document known as ‘Standard
5 E1527–97’, entitled ‘Standard Prac-
6 tice for Environmental Site Assess-
7 ment: Phase 1 Environmental Site
8 Assessment Process’, shall satisfy the
9 requirements in clause (i).

10 “(v) SITE INSPECTION AND TITLE
11 SEARCH.—In the case of property for resi-
12 dential use or other similar use purchased
13 by a nongovernmental or noncommercial
14 entity, a facility inspection and title search
15 that reveal no basis for further investiga-
16 tion shall be considered to satisfy the re-
17 quirements of this subparagraph.”.

18 **TITLE III—STATE RESPONSE** 19 **PROGRAMS**

20 **SEC. 301. STATE RESPONSE PROGRAMS.**

21 (a) DEFINITIONS.—Section 101 of the Comprehen-
22 sive Environmental Response, Compensation, and Liabil-
23 ity Act of 1980 (42 U.S.C. 9601) (as amended by section
24 202) is amended by adding at the end the following:

25 “(41) ELIGIBLE RESPONSE SITE.—

1 “(A) IN GENERAL.—The term ‘eligible re-
2 sponse site’ means a site that meets the defini-
3 tion of a brownfield site in subparagraphs (A)
4 and (B) of paragraph (39), as modified by sub-
5 paragraphs (B) and (C) of this paragraph.

6 “(B) INCLUSIONS.—The term ‘eligible re-
7 sponse site’ includes—

8 “(i) notwithstanding paragraph
9 (39)(B)(ix), a portion of a facility, for
10 which portion assistance for response activ-
11 ity has been obtained under subtitle I of
12 the Solid Waste Disposal Act (42 U.S.C.
13 6991 et seq.) from the Leaking Under-
14 ground Storage Tank Trust Fund estab-
15 lished under section 9508 of the Internal
16 Revenue Code of 1986; or

17 “(ii) a site for which, notwithstanding
18 the exclusions provided in subparagraph
19 (C) or paragraph (39)(B), the President
20 determines, on a site-by-site basis and
21 after consultation with the State, that limi-
22 tations on enforcement under section 129
23 at sites specified in clause (iv), (v), (vi) or
24 (viii) of paragraph (39)(B) would be ap-
25 propriate and will—

1 “(I) protect human health and
2 the environment; and

3 “(II) promote economic develop-
4 ment or facilitate the creation of,
5 preservation of, or addition to a park,
6 a greenway, undeveloped property,
7 recreational property, or other prop-
8 erty used for nonprofit purposes.

9 “(C) EXCLUSIONS.—The term ‘eligible re-
10 sponse site’ does not include—

11 “(i) a facility for which the
12 President—

13 “(I) conducts or has conducted a
14 remedial site investigation; and

15 “(II) after consultation with the
16 State, determines or has determined
17 that the site qualifies for listing on
18 the National Priorities List;

19 unless the President has made a deter-
20 mination that no further Federal action
21 will be taken; or

22 “(ii) facilities that the President de-
23 termines warrant particular consideration
24 as identified by regulation, such as sites

1 posing a threat to a sole-source drinking
2 water aquifer or a sensitive ecosystem.”.

3 (b) STATE RESPONSE PROGRAMS.—Title I of the
4 Comprehensive Environmental Response, Compensation,
5 and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as
6 amended by section 101(b)) is amended by adding at the
7 end the following:

8 **“SEC. 129. STATE RESPONSE PROGRAMS.**

9 “(a) ASSISTANCE TO STATES.—

10 “(1) IN GENERAL.—

11 “(A) STATES.—The Administrator may
12 award a grant to a State or Indian tribe that—

13 “(i) has a response program that in-
14 cludes each of the elements, or is taking
15 reasonable steps to include each of the ele-
16 ments, listed in paragraph (2); or

17 “(ii) is a party to a memorandum of
18 agreement with the Administrator for vol-
19 untary response programs.

20 “(B) USE OF GRANTS BY STATES.—

21 “(i) IN GENERAL.—A State or Indian
22 tribe may use a grant under this sub-
23 section to establish or enhance the re-
24 sponse program of the State or Indian
25 tribe.

1 “(ii) ADDITIONAL USES.—In addition
2 to the uses under clause (i), a State or In-
3 dian tribe may use a grant under this sub-
4 section to—

5 “(I) capitalize a revolving loan
6 fund for brownfield remediation under
7 section 128(c); or

8 “(II) develop a risk sharing pool,
9 an indemnity pool, or insurance mech-
10 anism to provide financing for re-
11 sponse actions under a State response
12 program.

13 “(2) ELEMENTS.—The elements of a State or
14 Indian tribe response program referred to in para-
15 graph (1)(A)(i) are the following:

16 “(A) Timely survey and inventory of
17 brownfield sites in the State.

18 “(B) Oversight and enforcement authori-
19 ties or other mechanisms, and resources, that
20 are adequate to ensure that—

21 “(i) a response action will—

22 “(I) protect human health and
23 the environment; and

1 “(II) be conducted in accordance
2 with applicable Federal and State law;
3 and

4 “(ii) if the person conducting the re-
5 sponse action fails to complete the nec-
6 essary response activities, including oper-
7 ation and maintenance or long-term moni-
8 toring activities, the necessary response ac-
9 tivities are completed.

10 “(C) Mechanisms and resources to provide
11 meaningful opportunities for public participa-
12 tion, including—

13 “(i) public access to documents that
14 the State, Indian tribe, or party con-
15 ducting the cleanup is relying on or devel-
16 oping in making cleanup decisions or con-
17 ducting site activities; and

18 “(ii) prior notice and opportunity for
19 comment on proposed cleanup plans and
20 site activities.

21 “(D) Mechanisms for approval of a clean-
22 up plan, and a requirement for verification by
23 and certification or similar documentation from
24 the State, an Indian tribe, or a licensed site
25 professional to the person conducting a re-

1 sponse action indicating that the response is
2 complete.

3 “(3) FUNDING.—There is authorized to be ap-
4 propriated to carry out this subsection \$50,000,000
5 for each of fiscal years 2001 through 2005.

6 “(b) ENFORCEMENT IN CASES OF A RELEASE SUB-
7 JECT TO STATE PROGRAM.—

8 “(1) ENFORCEMENT.—

9 “(A) IN GENERAL.— Except as provided in
10 subparagraph (B) and subject to subparagraph
11 (C), in the case of an eligible response site at
12 which—

13 “(i) there is a release or threatened
14 release of a hazardous substance, pollut-
15 ant, or contaminant; and

16 “(ii) a person is conducting or has
17 completed a response action regarding the
18 specific release that is addressed by the re-
19 sponse action that is in compliance with
20 the State program that specifically governs
21 response actions for the protection of pub-
22 lic health and the environment;

23 the President may not use authority under this
24 Act to take an administrative or judicial en-
25 forcement action under section 106(a) or to

1 take a judicial enforcement action to recover re-
2 sponse costs under section 107(a) against the
3 person regarding the specific release that is ad-
4 dressed by the response action.

5 “(B) EXCEPTIONS.—The President may
6 bring an enforcement action under this Act dur-
7 ing or after completion of a response action de-
8 scribed in subparagraph (A) with respect to a
9 release or threatened release at an eligible re-
10 sponse site described in that subparagraph if—

11 “(i) the State requests that the Presi-
12 dent provide assistance in the performance
13 of a response action;

14 “(ii) the Administrator determines
15 that contamination has migrated or will
16 migrate across a State line, resulting in
17 the need for further response action to
18 protect human health or the environment,
19 or the President determines that contami-
20 nation has migrated or is likely to migrate
21 onto property subject to the jurisdiction,
22 custody, or control of a department, agen-
23 cy, or instrumentality of the United States
24 and may impact the authorized purposes of
25 the Federal property;

1 “(iii) after taking into consideration
2 the response activities already taken, the
3 Administrator determines that—

4 “(I) a release or threatened re-
5 lease may present an imminent and
6 substantial endangerment to public
7 health or welfare or the environment;
8 and

9 “(II) additional response actions
10 are likely to be necessary to address,
11 prevent, limit, or mitigate the release
12 or threatened release; or

13 “(iv) the Administrator determines
14 that information, that on the earlier of the
15 date on which cleanup was approved or
16 completed, was not known by the State, as
17 recorded in documents prepared or relied
18 on in selecting or conducting the cleanup,
19 has been discovered regarding the contami-
20 nation or conditions at a facility such that
21 the contamination or conditions at the fa-
22 cility present a threat requiring further re-
23 mediation to protect public health or wel-
24 fare or the environment.

1 “(C) PUBLIC RECORD.—The limitations on
2 the authority of the President under subpara-
3 graph (A) apply only at sites in States that
4 maintain, update not less than annually, and
5 make available to the public a record of sites,
6 by name and location, at which response actions
7 have been completed in the previous year and
8 are planned to be addressed under the State
9 program that specifically governs response ac-
10 tions for the protection of public health and the
11 environment in the upcoming year. The public
12 record shall identify whether or not the site, on
13 completion of the response action, will be suit-
14 able for unrestricted use and, if not, shall iden-
15 tify the institutional controls relied on in the
16 remedy. Each State and tribe receiving finan-
17 cial assistance under subsection (a) shall main-
18 tain and make available to the public a record
19 of sites as provided in this paragraph.

20 “(D) EPA NOTIFICATION.—

21 “(i) IN GENERAL.—In the case of an
22 eligible response site at which there is a re-
23 lease or threatened release of a hazardous
24 substance, pollutant, or contaminant and
25 for which the Administrator intends to

1 carry out an action that may be barred
2 under subparagraph (A), the Adminis-
3 trator shall—

4 “(I) notify the State of the action
5 the Administrator intends to take;
6 and

7 “(II)(aa) wait 48 hours for a
8 reply from the State under clause (ii);
9 or

10 “(bb) if the State fails to reply to
11 the notification or if the Adminis-
12 trator makes a determination under
13 clause (iii), take immediate action
14 under that clause.

15 “(ii) STATE REPLY.—Not later than
16 48 hours after a State receives notice from
17 the Administrator under clause (i), the
18 State shall notify the Administrator if—

19 “(I) the release at the eligible re-
20 sponse site is or has been subject to
21 a cleanup conducted under a State
22 program; and

23 “(II) the State is planning to
24 abate the release or threatened re-
25 lease, any actions that are planned.

1 “(iii) IMMEDIATE FEDERAL ACTION.—

2 The Administrator may take action imme-
3 diately after giving notification under
4 clause (i) without waiting for a State reply
5 under clause (ii) if the Administrator de-
6 termines that 1 or more exceptions under
7 subparagraph (B) are met.

8 “(E) REPORT TO CONGRESS.—Not later
9 than 90 days after the date of initiation of any
10 enforcement action by the President under
11 clause (ii), (iii), or (iv) of subparagraph (B),
12 the President shall submit to Congress a report
13 describing the basis for the enforcement action,
14 including specific references to the facts dem-
15 onstrating that enforcement action is permitted
16 under subparagraph (B).

17 “(2) SAVINGS PROVISION.—

18 “(A) COSTS INCURRED PRIOR TO LIMITA-
19 TIONS.—Nothing in paragraph (1) precludes
20 the President from seeking to recover costs in-
21 curred prior to the date of enactment of this
22 section or during a period in which the limita-
23 tions of paragraph (1)(A) were not applicable.

24 “(B) EFFECT ON AGREEMENTS BETWEEN
25 STATES AND EPA.—Nothing in paragraph (1)—

1 “(i) modifies or otherwise affects a
2 memorandum of agreement, memorandum
3 of understanding, or any similar agreement
4 relating to this Act between a State agency
5 or an Indian tribe and the Administrator
6 that is in effect on or before the date of
7 enactment of this section (which agreement
8 shall remain in effect, subject to the terms
9 of the agreement); or

10 “(ii) limits the discretionary authority
11 of the President to enter into or modify an
12 agreement with a State, an Indian tribe, or
13 any other person relating to the implemen-
14 tation by the President of statutory au-
15 thorities.

16 “(3) EFFECTIVE DATE.—This subsection ap-
17 plies only to response actions conducted after June
18 8, 2000.

19 “(c) EFFECT ON FEDERAL LAWS.—Nothing in this
20 section affects any liability or response authority under
21 any Federal law, including—

22 “(1) this Act, except as provided in subsection
23 (b);

24 “(2) the Solid Waste Disposal Act (42 U.S.C.
25 6901 et seq.);

1 “(3) the Federal Water Pollution Control Act
2 (33 U.S.C. 1251 et seq.);
3 “(4) the Toxic Substances Control Act (15
4 U.S.C. 2601 et seq.); and
5 “(5) the Safe Drinking Water Act (42 U.S.C.
6 300f et seq.).”.

7 **SEC. 302. ADDITIONS TO NATIONAL PRIORITIES LIST.**

8 Section 105 of the Comprehensive Environmental Re-
9 sponse, Compensation, and Liability Act of 1980 (42
10 U.S.C. 9605) is amended by adding at the end the fol-
11 lowing:

12 “(h) NPL DEFERRAL.—

13 “(1) DEFERRAL TO STATE VOLUNTARY CLEAN-
14 UPS.—At the request of a State and subject to para-
15 graphs (2) and (3), the President generally shall
16 defer final listing of an eligible response site on the
17 National Priorities List if the President determines
18 that—

19 “(A) the State, or another party under an
20 agreement with or order from the State, is con-
21 ducting a response action at the eligible re-
22 sponse site—

23 “(i) in compliance with a State pro-
24 gram that specifically governs response ac-

1 tions for the protection of public health
2 and the environment; and

3 “(ii) that will provide long-term pro-
4 tection of human health and the environ-
5 ment; or

6 “(B) the State is actively pursuing an
7 agreement to perform a response action de-
8 scribed in subparagraph (A) at the site with a
9 person that the State has reason to believe is
10 capable of conducting a response action that
11 meets the requirements of subparagraph (A).

12 “(2) PROGRESS TOWARD CLEANUP.—If, after
13 the last day of the 1-year period beginning on the
14 date on which the President proposes to list an eligi-
15 ble response site on the National Priorities List, the
16 President determines that the State or other party
17 is not making reasonable progress toward com-
18 pleting a response action at the eligible response
19 site, the President may list the eligible response site
20 on the National Priorities List.

21 “(3) CLEANUP AGREEMENTS.—With respect to
22 an eligible response site under paragraph (1)(B), if,
23 after the last day of the 1-year period beginning on
24 the date on which the President proposes to list the
25 eligible response site on the National Priorities List,

1 an agreement described in paragraph (1)(B) has not
2 been reached, the President may defer the listing of
3 the eligible response site on the National Priorities
4 List for an additional period of not to exceed 180
5 days if the President determines deferring the listing
6 would be appropriate based on—

7 “(A) the complexity of the site;

8 “(B) substantial progress made in negotia-
9 tions; and

10 “(C) other appropriate factors, as deter-
11 mined by the President.

12 “(4) EXCEPTIONS.—The President may decline
13 to defer, or elect to discontinue a deferral of, a list-
14 ing of an eligible response site on the National Pri-
15 orities List if the President determines that—

16 “(A) deferral would not be appropriate be-
17 cause the State, as an owner or operator or a
18 significant contributor of hazardous substances
19 to the facility, is a potentially responsible party;

20 “(B) the criteria under the National Con-
21 tingency Plan for issuance of a health advisory
22 have been met; or

23 “(C) the conditions in paragraphs (1)
24 through (3), as applicable, are no longer being
25 met.”.